



Total Maximum Daily Load (TMDL) Program

United States
Environmental Protection
Agency

Office of Water
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www.epa.gov/water/

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Proposed Regulatory Revisions to the Total Maximum Daily Load Program and Associated Proposed Regulatory Revisions to the National Pollutant Discharge Elimination System and the Water Quality Standards Programs

The U.S. Environmental Protection Agency (EPA) is proposing revisions to the Total Maximum Daily Load (TMDL) regulations (40 CFR Part 130) for implementing state, territorial, authorized tribal, and EPA responsibilities under Section 303(d) of the Clean Water Act. This action also includes revisions to the National Pollutant Discharge Elimination System (NPDES) and Water Quality Standards regulations to facilitate implementation of TMDLs.

States and territories have identified over 20,000 individual river segments, lakes, and estuaries across America as polluted. These polluted waters include approximately 300,000 miles of river and shoreline and approximately 5 million acres of lakes -- polluted mostly by sedimentation, nutrients, and harmful microorganisms. With the overwhelming majority of the population living within 10 miles of these polluted waters, these proposed regulatory revisions will have a profound impact on the environment and health of communities across the country.

These proposed regulatory revisions address issues of fundamental importance to cleaning up our Nation's polluted waters. Listing impaired and threatened waters and establishing TMDLs are fundamental tools for identifying remaining sources of water pollution and achieving water quality goals. Clean-up plans developed under this regulatory proposal will help to restore the health of thousands of miles of river and shoreline and make millions of lake acres safe for fishing, swimming and other activities.

Overview

Under Section 303(d), states, territories, and authorized tribes (collectively referred to as "states") are required to develop lists of impaired waters. These are waters that do not meet water quality standards, even after point sources of pollution have installed the minimum required levels of pollution control technology. States must establish priority rankings for waters on the lists and develop TMDLs for listed waters. A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and allocates pollutant loadings among point and nonpoint pollutant sources. EPA must approve or disapprove state lists and TMDLs. If

a state submission is inadequate, EPA must establish the list or the TMDL.

In 1996, the Office of Water determined that there was a need for a comprehensive evaluation of EPA's and the states' implementation of their Section 303(d) responsibilities. EPA convened a committee under the Federal Advisory Committee Act (TMDL FACA committee) to undertake such an evaluation and make recommendations for improving such implementation, including recommended changes to the TMDL regulations and guidance. The TMDL FACA committee was comprised of 20 individuals with diverse backgrounds, including agriculture, forestry, environmental advocacy, industry, and State, local, and Tribal governments. On July 28, 1998, the committee submitted its final report to EPA containing more than 100 consensus recommendations, a subset of which would require regulatory changes. The TMDL FACA committee recommendations helped to guide the development of the proposed revisions to the TMDL, NPDES and water quality standards regulations.

Proposed Revisions to the TMDL Regulations

The purpose of the proposed revisions to the TMDL regulations is to provide states with clear, consistent, and balanced direction for listing waters and developing TMDLs, resulting in restoration of waterbodies not meeting water quality standards. The proposed regulations would accomplish this goal by clarifying and revising the existing regulations to:

- Ensure that state 303(d) listing methodologies are more specific, subject to public review, and submitted to EPA for review eight months prior to submission of the list. (EPA is seeking comment on how frequently states should submit methodologies and lists.)
- Establish a new format for the state 303(d) lists that will create a more comprehensive list of waterbodies impaired and threatened by pollution and pollutants. This new format would organize the lists into four categories:
 - waters impaired or threatened by pollutants or by unknown causes,
 - waters impaired or threatened by pollution,
 - waters for which TMDLs have been completed, but water quality standards have not yet been attained, and
 - waters expected to meet water quality standards by the next listing cycle as a result of the use of other enforceable pollution controls.

Under this new format, TMDLs would only be established for waters in the first category. In addition, impaired waters would remain listed until water quality standards are achieved;

- Include a new requirement that states establish and submit to EPA schedules for establishing TMDLs with no longer than a 15 year timeframe for all waterbody and pollutant combinations;
- Ensure that states establish TMDLs for high priority waterbodies before they do so for medium and low priority waterbodies, and also encourage states to schedule high priority waterbodies for TMDL establishment no later than five years from listing;

- Include a new requirement that states assign a high priority to waterbody and pollutant combinations which are designated as public drinking water supplies and which cause a violation of the maximum contaminant level, and/or for pollutants causing an impairment or threat for species listed as endangered or threatened under section 4 of the Endangered Species Act;
- Clarify that a TMDL must contain the following 10 specific elements:
 - Name and location of the impaired or threatened waterbody;
 - Identification of the pollutant and the amount of the pollutant that the waterbody can receive and still meet water quality standards;
 - Identification of the amount by which the pollutant must be reduced for the waterbody to meet water quality standards;
 - Identification of the source or sources of the pollutant;
 - Determination of the amount of the pollutant that may come from point sources;
 - Determination of the amount of the pollutant that may come from nonpoint sources;
 - A margin of safety;
 - Consideration of seasonal variations;
 - Limited allowance for future growth and reasonably foreseeable increases in pollutant loads; and
 - An implementation plan.
- Include a new requirement that an approvable TMDL must have an implementation plan consisting of eight elements, including:
 - A list of actions needed to reduce pollutant loadings;
 - Timeline describing when these actions will occur;
 - Reasonable assurances that the wasteload allocations for point sources and the load allocations for nonpoint sources will be implemented;
 - Legal authorities to be used;
 - Estimate of the time it will take to meet water quality standards;
 - Monitoring or modeling plan to determine if reductions are being achieved;
 - Milestones for measuring progress; and
 - Plans for revising the TMDL if progress is not being made.
- Clarify that TMDLs may be expressed in terms appropriate to the desired condition of the waterbody or the characteristics of the pollutant load;
- Ensure that the public will be notified and have the opportunity to comment on lists, priority rankings, schedules, and TMDLs prior to submission to EPA; and
- Allow the public to petition EPA to establish TMDLs where a state has substantially failed to do so consistent with the state's schedule.

Proposed Revisions to the NPDES and Water Quality Standards Regulations

The purpose of the proposed revisions to the NPDES and water quality standards regulations is to achieve reasonable further progress toward attainment of water quality standards in impaired waterbodies after listing and pending TMDL establishment, and to provide reasonable assurance that TMDLs, once completed, will be adequately implemented. EPA may also, in the future, promulgate federal water quality standards for states, pursuant to section 303(c)(2)(B), to ensure consistent, nationwide

application of the new requirements in the period between listing and TMDL establishment.

The proposed regulations would accomplish this goal by clarifying and revising the existing regulations to:

- Include a new requirement that large new or significantly expanding dischargers obtain an offset of one-and-a-half times their proposed discharge before beginning to discharge, unless the Director (i.e. the EPA Regional Administrator or the State Director in a state that is authorized to administer the NPDES program) determines either: (1) that an offset other than 1.5:1, but more than 1:1, is sufficient to achieve reasonable further progress, or (2) that any offset would result in further degradation of water quality, in which case the Director need not require an offset. These proposed offset requirements would be in addition to current Clean Water Act provisions requiring discharge limits to protect water quality standards;
- Define a significant expansion of an existing discharger as a 20 percent or greater increase in pollutant loadings above current permitted pollutant loads;
- Provide EPA the authority to object to, and ultimately reissue, expired and administratively-continued permits for discharges to impaired waterbodies in NPDES-authorized states where reissuance is necessary to ensure reasonable further progress towards meeting water quality standards while a TMDL is being established or where it is necessary to ensure that a completed TMDL is adequately implemented; and
- Provide EPA the authority to designate certain operations such as Concentrated Animal Feeding Operations, Concentrated Aquatic Animal Production Facilities, and certain silviculture operations as point sources and require them to obtain NPDES permits after completion of a TMDL in cases where EPA is required to establish the TMDL.

Opportunities for Public Comment on the Proposal

The proposed regulatory revisions will be published in the Federal Register for a 60 day comment period. A copy of the proposal will also be available at: <http://www.epa.gov/owow/tmdl/> on the Internet.

Written comments on the proposed regulatory revisions to the TMDL program should be sent to:

*Comment Clerk for the TMDL Rule
Water Docket (W-98-31)
U.S. Environmental Protection Agency
401 M Street, S.W., Washington, D.C. 20460*

Written comments on the proposed regulatory revisions to the NPDES and water quality standards programs should be sent to:

Comment Clerk for the TMDL Rule

Water Docket (W-99-04)
U.S. Environmental Protection Agency
401 M Street, S.W., Washington, D.C. 20460

Comments will also be accepted electronically at the following Internet address:
<ow-docket@epa.gov>.

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<http://www.epa.gov/OWOW/tmdl/tmdlfs.html>

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